Supreme Court of the United States.

No. 172.—October Term, 1905.

John Strickley and Ellen Strickley, Plaintiffs in Error,
vs.
The Highland Boy Gold Mining Company.

In Error to the Supreme Court of the State of Utah.

[February 19, 1906.]

Mr. Justice Holmes delivered the opinion of the Court.

This is a proceeding begun by the defendant in error, a mining corporation, to condemn a right of way for an aerial bucket line across a placer mining claim of the plaintiffs in error. The mining corporation owns mines high up in Bingham Canyon, in West Mountain Mining District, Salt Lake County, Utah, and is using the line or way to carry ores, &c., for itself and others from the mines, in suspended buckets, down to the railway station, two miles distant and twelve hundred feet below. Before building the way it made diligent inquiry but could not discover the owner of the placer claim in question, Strickley standing by without objecting or making known his rights while the company put up its structure. The trial court found the facts and made an order of condemnation. This order recites that the mining company has paid into Court the value of the right of way, as found, and costs, describes the right of way by metes and bounds and specifies that the same is to be used for the erection of certain towers to support the cables of the line, with a right to drive along the way when necessary for repairs, the mining company to move the towers as often as reasonably required by the owners of the claim for using and working the said claim. The foregoing final order was affirmed by the Supreme Court of the State. 78 Pac. Rep. 296. The case then was brought here.

The plaintiffs in error set up in their answer to the condemnation proceedings that the right of way demanded is solely for private use, and that the taking of their land for that purpose is contrary to the Fourteenth Amendment of the Constitution of the United States. The mining company on the other hand relies upon the statutes of Utah, which provide that "the right of eminent domain may be exercised in behalf of the following public uses: . . . (6) Roads, railroads, tramways, tunnels, ditches, flumes, pipes and dumping places to facilitate the milling, smelting or other reduction of ores, or the working of mines." In view of the

decision of the State Court we assume that the condemnation was authorized by the State laws, subject only to the question whether those laws as construed are consistent with the Fourteenth Amendment. Some objections to this view were mentioned, but they are not open. If the statutes are constitutional as construed, we follow the construction of the State Court. On the other hand, there is no ground for the suggestion that the claim by the plaintiffs in error of their rights under the Fourteenth Amendment does not appear sufficiently on the record. The suggestion was not pressed.

The single question, then, is the constitutionality of the Utah statute, and the particular facts of the case are material only as showing the length to which the statute is held to go. There is nothing to add with regard to them, unless it be the finding that the taking of the strip across the placer claim is necessary for the aerial line and is consistent with the use of all of the claim by the plaintiffs in error for mining, except to the extent of the temporary interference over a limited space by four towers, each about seven and a half feet square and removable as stated above.

The question thus narrowed is pretty nearly answered by the recent decision in *Clark* v. *Nash*, 198 U. S. 361. That case established the constitutionality of the Utah statute, so far as it permitted the condemnation of land for the irrigation of other land belonging to a private person, in pursuance of the declared policy of the State. In discussing what constitutes a public use it recognized the inadequacy of use by the general public as a universal test. While emphasizing the great caution necessary to be shown, it proved that there might be exceptional times and places in which the very foundations of public welfare could not be laid without requiring concessions from individuals to each other upon due compensation which under other circumstances would be left wholly to voluntary consent. In such unusual cases there is nothing in the Fourteenth Amendment which prevents a State from requiring such concessions. If the State constitution restricts the legislature within narrower bounds that is a local affair, and must be left where the State Court leaves it in a case like the one at bar.

In the opinion of the legislature and the Supreme Court of Utah the public welfare of that State demands that aerial lines between the mines upon its mountain sides and the railways in the valleys below should not be made impossible by the refusal of a private owner to sell the right to cross his land. The Constitution of the United States does not require us to say that they are wrong. If, as seems to be assumed in the brief for the defendant in error, the finding that the plaintiff is a carrier for itself and others means that the line is dedicated to carrying for whatever portion of the public may desire to use it, the foundation of the argument on the other side disappears.

Judgment affirmed.